

174830
174831

SOWELL

SOWELL GRAY STEPP & LAFFITTE, LLC
ATTORNEYS AND COUNSELORS AT LAW

July 18, 2005

VIA HAND DELIVERY

Charles Terreni
Chief Clerk and Administrator
South Carolina Public Service Commission
Synergy Office Park
101 Executive Center Drive, Suite 100
Columbia, South Carolina 29210

2005 JUL 18 PM 2:00
SOWELL GRAY STEPP & LAFFITTE, LLC
COLUMBIA, SC 29210

Re: South Carolina Electric & Gas Co. v. Aiken Electric Cooperative, Inc.
Docket Nos.: 2003-254-E and 2005-180-E
SGSL No.: 5793/1501

Dear Mr. Terreni:

I am filing with the Public Service Commission an original and ten copies of SCE&G's Response to Aiken Electric Cooperative's Motion to Vacate, Modify, and/or Reconsider the Commission's Order No. 2005-360 Granting Consolidation of Dockets in the above-referenced matter. Please return one copy, clocked in, to me via our courier.

By copy of this letter I am serving all parties with the same.

Thank you for your assistance in this matter.

Sincerely,


Robert E. Tyson, Jr.

Robert E. Tyson, Jr.
rtyson@sowell.com
DD 803.231.7838

RETjr:alw
Enclosure

cc: (w/enclos.)

C. Dukes Scott, Executive Director South Carolina Office of Regulatory Staff
Val H. Stieglitz, Esquire
Marcus A. Manos, Esquire
David J. Black, Esquire
Shannon Bowyer, Hudson, Esquire
Wendy B. Cartledge, Esquire
James B. Richardson, Jr. Esquire
Patricia B. Morrison, Esquire

1310 Gadsden Street
Post Office Box 11449
Columbia, SC 29211

803.929.1400

803.929.0300

www.sowell.com

BEFORE THE
PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NOS. 2003-254-E AND 2005-180-E

South Carolina Electric & Gas Co.,)	
)	
Complainant,)	
-vs-)	
)	
Aiken Electric Cooperative, Inc.,)	
)	
Defendant.)	
<hr style="width:45%; margin-left:0;"/>		

2005 JUN 15 PM 2:00
SOUTH CAROLINA
PUBLIC SERVICE COMMISSION

**SOUTH CAROLINA ELECTRIC & GAS COMPANY'S RESPONSE TO AIKEN
ELECTRIC COOPERATIVE, INC'S MOTION TO VACATE, MODIFY AND/OR
RECONSIDER THE COMMISSION'S ORDER NO. 2005-360 GRANTING
CONSOLIDATION OF DOCKETS**

The Plaintiff, South Carolina Electric & Gas Co. ("SCE&G") hereby submits its Response in opposition to Aiken Electric Cooperative, Inc.'s ("Aiken") Motion to Vacate, Modify and/or Reconsider the Commission's Order to Consolidate. Aiken's Motion lacks any legal or factual support and therefore Aiken's motion should be denied.

BACKGROUND

On August 27, 2003, SCE&G filed a Complaint with the Public Service Commission of South Carolina (hereinafter "Commission") alleging that Aiken had violated Commission Regulation R. 103-304(1). This complaint was assigned Docket No. 2003-254-E. Docket No. 2003-254-E has not been resolved by the Commission and remains pending. On June 9, 2005, SCE&G filed a Complaint with the Commission alleging another violation by Aiken of Commission Regulation R. 103-304(1). This second Complaint was assigned Docket No. 2005-180-E. Also, on June 9, 2005,

SCE&G filed a Motion to Consolidate the new Complaint (Docket No. 2005-180-E) with Docket No. 2003-254-E because both matters allege willful violations of the Commissions' regulations and judicial economy would therefore be served by consolidating the matters. The Motion to Consolidate was served upon counsel for Aiken in Docket No. 2003-254-E by United States mail on June 9, 2005. On June 24, 2005, the Commission, pursuant to its normal business procedures, listed all matters to be heard at its weekly meeting scheduled for June 30, 2005. SCE&G's Motion to Consolidate was listed as an agenda item for the Commission's scheduled meeting on June 30, 2005. On June 30, the Commission approved SCE&G's Motion to Consolidate by a unanimous vote. On July 7, 2005, the Commission issued Order No. 2005-360 consolidating Dockets No. 2003-254-E and 2005-180-E. Aiken submitted its motion to vacate, modify and/or reconsider on July 8, 2005.

ARGUMENT

In its Motion to Vacate Order No. 2005-360, Aiken attempts to mix apples with oranges by arguing that Aiken's time to respond to the Motion to Consolidate did not expire until Aiken had responded to the second Complaint. This argument fails to take into account, however, that the Motion to Consolidate was also served in Docket No. 2003-254-E, which Aiken answered two years ago.

The Commission rules and regulations do not provide a specific time period for responses to Motions. However, the South Carolina Rules of Civil Procedure provide that a Motion shall be served not later than ten (10) days before the time specified for a hearing. South Carolina Rule Civil Procedure 6(d). Commission Regulation R. 103-840(A) also requires motions to be submitted at least 10 days prior to a hearing.

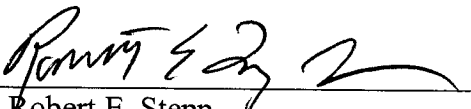
Furthermore, Commission Regulation R. 103-840 (B) grants the Commission discretion to decide the motion upon due notice to all parties of record. Aiken was on notice of SCE&G's Motion to Consolidate on June 10. The Commission ruled some 20 days later. Aiken cannot claim to have been prejudiced because Aiken chose not to respond before the motion was ripe for a hearing.

Furthermore, Commission Order No. 2005-360 determined SCE&G's motion to be "reasonable and finds that judicial economy would be served by consolidation of the two present dockets." The Order's language demonstrates the Commission reviewed the Motion and the relevant Dockets in determining the actions in the two complaints are similar and therefore it was reasonable to consolidate the two actions.

CONCLUSION

Aiken's Motion is not supported by the law. The Commission clearly has the authority to decide motions after notice is given to all parties and after at least 10 days after a motion is filed. Aiken failed to respond and therefore the Commission's Order should be affirmed and Aiken's Motion to Vacate Order No. 2005-360 denied.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: 
Robert E. Stepp
Robert E. Tyson, Jr.
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

-and-

Patricia Banks Morrison
South Carolina Electric & Gas Co.
Legal Dept., Mail Code 130
1426 Main Street
Columbia, SC 29218
(803) 217-7880

Attorneys for Complainant South Carolina
Electric & Gas Co.

Columbia, South Carolina


July 18, 2005

South Carolina Electric and Gas Co.)
)
Complainant,)
)
vs.)
)
Aiken Electric Cooperative, Inc.)
)
Defendant.)
)

I, the undersigned employee of the law offices of Sowell Gray Stepp & Laffitte, L.L.C., attorneys for South Carolina Electric & Gas Company do hereby certify that I have served a copy of the pleading(s) hereinbelow specified via regular mail or hand delivery as indicated to the following address(es):

VIA HAND DELIVERY
C. Dukes Scott, Esquire
Office of Regulatory Staff
Post Office Box 11263
Columbia, SC 29211

VIA HAND DELIVERY
Shannon Bowyer Hudson, Esquire
Wendy B. Cartledge, Esquire
Office of Regulatory Staff
Post Office Box 11263
Columbia, SC 29211



Amy Wyatt

July 18, 2005